

Shellfish Ordinance
TOWN OF SOUTHWEST HARBOR

1. AUTHORITY

This ordinance is enacted in accordance with 12 M.R.S.A. Section 6671.

2. PURPOSE

To establish a Shellfish Conservation Program for the Town of Southwest Harbor which will ensure the protection and optimum utilization of shellfish resources within its limits. These goals will be achieved by means which may include:

- A. Licensing
- B. Limiting the number of shellfish harvesters
- C. Restricting the time and area where digging is permitted
- D. Limiting the minimum size of clams taken
- E. Limiting the amount of clams taken daily by a harvester

3. SHELLFISH CONSERVATION COMMITTEE

The Shellfish Conservation Program for the Town of Southwest Harbor will be administered by the Shellfish Conservation Committee consisting of seven (7) members to be appointed by the selectmen of the town for terms of from one (1) to three (3) years. Committee decisions will require an affirmative vote of four (4) members.

The committee's responsibilities include:

- A. Establishing annually in conjunction with the Department of Marine Resources (DMR) the number of shellfish licenses to be issued.
- B. Submitting to the Board of Selectmen proposals for the expenditure of funds for the purpose of shellfish conservation.
- C. Keeping this ordinance under review and making recommendations for its amendments.
- D. Securing and maintaining records of shellfish harvest from the Town's managed shellfish areas.
- E. Recommending conservation closures and openings to the Board of Selectmen in conjunction with the Department of Marine Resources Area Biologist.
- F. Submitting an annual report to the Town of Southwest Harbor and the Department of Marine Resources covering above topics and all other committee activities.

4. DEFINITIONS

- A. **Resident** The term "resident" refers to a person who has been domiciled in this municipality for at least three months prior to the time his claim of such residence is made.
- B. **Nonresident** The term "nonresident" means anyone not qualified as a resident under this ordinance.
- C. **Shellfish, Clams and Intertidal Shellfish Resources** When used in the context of this ordinance the words "shellfish", "clams", and "intertidal shellfish resources" mean soft shell clams (*Mya arenaria*).

D. Municipality Refers to the Town of Southwest Harbor, Maine.

5. LICENSING

It is unlawful for any person to dig or take shellfish from the shores and flats of this municipality without having a current license issued by this municipality as provided by this ordinance. The Town Clerk (or a designee) shall issue Resident and Nonresident recreational licenses.

A. Designation, Scope and Qualifications

1. Resident Recreational License The license is available to residents and real estate taxpayers of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself or his family.

2. Nonresident Recreational License The license is available to any person not a resident or real estate taxpayer of this municipality and entitles the holder to dig and take no more than one peck of shellfish in any one day for the use of himself or his family.

3. License must be signed The license must be signed by the holder to make it valid.

B. Application Procedure Any person may apply to the Town Clerk (or a designee) for the license required by this ordinance on forms provided by the municipality.

1. Contents of the Application The application must be in the form of an affidavit and must contain the applicant's name, current address, birth date, height, weight, and basis for claim of status as a town resident or real estate taxpayer and must be signed by the applicant attesting to the accuracy of this information.

2. Misrepresentation Any person who gives false information on a license application will cause said license to become invalid and void.

C. Fees The fees for the license must accompany in full the application for the respective license. The Town Clerk shall pay all fees received to the Town treasurer. The fee for a Resident Recreational License is \$20.00 and the fee for a Nonresident Recreational License is \$40.00, except that there will be no fee for a person 15 years of age and younger whether a resident or a nonresident. Fees received for shellfish licensing shall be used by the town for shellfish management, conservation, and enforcement.

D. Limitation of Diggers Clam resources vary in size and distribution from year to year and over the limited soft shell clam producing areas of the town. It is essential that the town carefully husband its resources. Following the annual review of the town's clam resources, its size distribution, abundance, and the wardens' reports as required by Section 3, the Shellfish Conservation Committee in consultation with the DMR Area Biologist will determine whether limiting recreational shellfish licenses is an appropriate shellfish management option for the following year.

1. Prior to November 1st the committee shall report its findings and document recommendations for the allocation of recreational licenses to be made available for the following license year to the Commissioner of Marine Resources for concurrence.
2. After receiving approval of proposed license allocations from the Commissioner of Marine Resources and prior to January 1st, the Shellfish Conservation Committee shall notify the Town Clerk in writing of the allocation of shellfish licenses to be issued.
3. Notice of licenses to be issued and procedure for application shall be published in a trade or industry publication, or in a newspaper or combination of newspapers with general circulation, which Town Board of Selectmen consider effective in reaching persons affected, not less than ten (10) days prior to the period of issuance and shall be posted in the municipal offices until the period concludes.
4. No digging will be allowed from ½ hour after sunset to ½ hour before sunrise.
5. The number of Resident and Nonresident recreational licenses issued shall be unlimited.

E. License Expiration Date Each license issued under authority of this ordinance expires at midnight the 31st day of December following the date of issuance.

F. Suspension Any shellfish licensee having two convictions for a violation of this ordinance shall have his license automatically suspended for a period of thirty (30) days.

G. Suspension continued Any shellfish licensee having three convictions in a twelve-month period for a violation of this ordinance shall have his shellfish license automatically suspended for a period of one year.

1. A licensee whose shellfish license has been suspended pursuant to this ordinance may reapply for a license only after the suspension period has expired.
2. The suspension shall be effective from the date of mailing of a notice of suspension by the Town Clerk to the licensee.

3. Any licensee whose shellfish license has been automatically suspended pursuant to this section shall be entitled to a hearing before the Shellfish Conservation Committee upon the filing of a written request for a hearing with the Town Clerk within thirty (30) days following the effective date of suspension. The licensee may appeal the decision of the Shellfish Conservation Committee before the Board of Selectmen by filing a written request for appeal with the Town Clerk within seven (7) days of the decision of the Shellfish Conservation Committee.

H. Fines All monies received as fines for violation of this ordinance will be received by the Town Treasurer and will be used by the town for shellfish management, conservation, and enforcement.

6. OPENING AND CLOSING FLATS

The Town Board of Selectmen, upon the approval of the Commissioner of Marine Resources, may open and close areas for shellfish harvest. Upon recommendations of the Shellfish Conservation Committee and concurrence of the DMR Area Biologist that the status of shellfish resource and other factors bearing on sound management indicate that an area should be opened or closed, the Town Board of Selectmen may call a public hearing, and shall send a copy of the notice to the Department of Marine Resources. The decision of the Town Board of Selectmen made after the hearing shall be based on findings of fact.

Any area of the Town of Southwest Harbor that is closed to shellfish harvest by state regulation on the effective date of this ordinance that is subsequently opened by the state shall remain closed by the town until reopened by decision of the Town Board of Selectmen after a public hearing.

7. MINIMUM LEGAL SIZE OF SOFT SHELL CLAMS

It is unlawful for any person to possess soft shell clams within the Town of Southwest Harbor, County of Hancock which are less than two (2) inches in the longest diameter except as provided by subsection B of this section.

A. Definitions

1. Lot The word "lot" as used in this ordinance means the total number of soft shell clams in any bulk pile. Where soft-shell clams are in a box, barrel, or other container, the contents of each box, barrel, or other container constitutes a separate lot.

2. Possess For the purpose of this section, "possess" means dig, take, harvest, ship, transport, hold, buy, and sell retail and wholesale soft shell clam shell stock.

B. Tolerance Any person may possess soft-shell clams what are less than two (2) inches if they comprise less than 10% of any lot. The tolerance shall be determined by numerical count of not less than one (1) peck nor more than four (4) pecks taken at random from various parts of the lot or by a count of the entire lot if it contains less than one (1) peck.

C. Penalty Whoever violates any provision of this section shall be punished as provided by 12 M.R.S.A. § 6681.

8. PENALTY

A person who violates this ordinance shall be punished as provided by 12 M.R.S.A. § 6671 (10).

9. EFFECTIVE DATE

This ordinance, which has been approved by the Commissioner of Marine Resources, shall become effective after its adoption by the municipality provided a certified copy of the ordinance is filed with the Commissioner within twenty (20) days of its adoption.

10. PERIOD OF THE ORDINANCE

This ordinance shall remain in effect for a period of three (3) years from the effective date.

11. SEPARABILITY

If any section, subsection, sentence or part of this ordinance is for any reason held to be invalid or unconstitutional, such decisions shall not affect the validity of the remaining portion of this ordinance.

12. REPEAL

Any ordinance regulating the harvest or conservation of shellfish in the town and any provisions of any other town ordinance, which is inconsistent with this ordinance, is hereby repealed.